

# Order

Entered: March 25, 2003

Michigan Supreme Court  
Lansing, Michigan

Maura D. Corrigan,  
Chief Justice

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Clifford W. Taylor  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

1999-10

## Amendment of Rules 703 and 1101 of the Michigan Rules of Evidence

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On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of the Michigan Rules of Evidence are adopted, effective September 1, 2003.

[The present language of MRE 703 and 1101 is amended as indicated below.]

### Rule 703 Bases of Opinion Testimony by Experts

The facts or data in the particular case upon which an expert bases an opinion or inference ~~may be those perceived by or made known to the expert at or before the hearing shall be in evidence. The court may require that underlying facts or data essential to an opinion or inference be in evidence.~~ This rule does not restrict the discretion of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence thereafter.

### Rule 1101 Applicability

(a) [Unchanged.]

(b) *Rules inapplicable.* The rules other than those with respect to privileges do not apply in the following situations and proceedings:

(1) - (8) [Unchanged.]

(9) *Domestic Relations Matters.* The court's consideration of a report or recommendation submitted by the friend of the court pursuant to MCL 552.505(1)(d) or (e).

- (10) *Mental Health Hearings.* In hearings under Chapters 4, 4A, 5, and 6 of the Mental Health Code, MCL 330.1400 *et seq.*, the court may consider hearsay data that are part of the basis for the opinion presented by a testifying mental health expert.

Staff Comment: The March 25, 2003, amendments of MRE 703 and 1101, effective September 1, 2003, were recommended by the Advisory Committee on the Michigan Rules of Evidence appointed by the Supreme Court. (See January 28, 2003, follow-up report from Honorable William J. Giovan, advisory committee chair, at <http://www.courts.michigan.gov/supremecourt/Resources/Administrative/index.htm>.) The modification of MRE 703 corrects a common misreading of the rule by allowing an expert's opinion only if that opinion is based exclusively on evidence that has been introduced into evidence in some way other than through the expert's hearsay testimony. New MRE 1101(b)(9) allows a trial judge to consider a friend of the court report prepared pursuant to MCL 552.505(1)(d) or (e), which "may include reports and evaluations by outside persons or agencies if requested by the parties or the court." New MRE 1101(b)(10) allows probate judges who are conducting preliminary mental health hearings to consider expert opinions that otherwise would be excluded by MRE 703 because the opinions are based on hearsay information.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 25, 2003

Corbin R. Davis

Clerk